

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JOSE ALBINO LUCERO JR., on Behalf of
Himself and all Others Similarly Situated,

Plaintiff,

vs.

SOLARCITY CORP.,

Defendant.

Case No. 3:15-cv-05107-RS

~~[PROPOSED]~~ ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT,
CERTIFYING SETTLEMENT
CLASS FOR SETTLEMENT
PURPOSES ONLY, AND
APPROVING NOTICE PLAN

Hon. Richard Seeborg
Action Filed: November 6, 2015

1 WHEREAS, a class action is pending before the Court entitled *Lucero v. SolarCity Corp.*,
2 Case No. 3:15-cv-05107-RS, alleging Defendant violated the Telephone Consumer Protection Act
3 (“TCPA”), 47 U.S.C. § 227 *et seq.*;

4 WHEREAS, on June 1, 2016, a separate action, styled *Gibbs and Colby v. SolarCity Corp.*,
5 4:16-cv-11010-DHH (D. Mass.) (“*Gibbs*”), was filed by Carole Gibbs and Arthur Colby (the *Gibbs*
6 plaintiffs), also alleging Defendant violated the Telephone Consumer Protection Act (“TCPA”), 47
7 U.S.C. § 227 *et seq.*;

8 WHEREAS, on July 27, 2016, counsel for *Lucero* plaintiff Jose Albino Lucero Jr.
9 (“Plaintiff”) filed a motion to intervene in *Gibbs* and to transfer it to the Northern District of
10 California;

11 WHEREAS, Representative Plaintiff, the Settlement Class Members, and Defendant
12 SolarCity Corporation (“Defendant” or “SolarCity”) have determined to settle all claims asserted
13 against Defendant with prejudice on the terms and conditions set forth in the Class Action
14 Settlement Agreement (the “Agreement”) and fully, finally, and forever resolve, discharge, and
15 settle the Released Claims against the Released Parties upon the terms and conditions set forth
16 therein, subject to the approval of this Court (the “Settlement”);

17 WHEREAS, Plaintiff having made an application, pursuant to Rule 23(e) of the Federal
18 Rules of Civil Procedure, for an order preliminarily approving the Settlement of the Litigation, in
19 accordance with the Agreement, certifying the Settlement Class for purposes of settlement only, and
20 allowing notice to Settlement Class Members as more fully described herein;

21 This matter coming before the Court upon the agreement of the Parties, good cause being
22 shown, and the Court being fully advised in the premises,

23 **IT IS HEREBY ORDERED, DECREED, AND ADJUDGED AS FOLLOWS:**

24 1. Terms and phrases in this order shall have the same meaning as ascribed to them in
25 the Agreement.

26 2. The Parties have moved the Court for an order approving the settlement of the
27 Litigation in accordance with the Agreement, which, together with the documents incorporated
28 therein, sets forth the terms and conditions for a proposed settlement and dismissal of the Litigation

1 with prejudice against Plaintiff, and the Court having read and considered the Agreement and
2 having heard the Parties and being fully advised in the premises, hereby preliminarily approves the
3 Agreement in its entirety subject to the Final Approval Hearing referred to in Paragraph 17 of this
4 Order.

5 3. This Court finds that it has jurisdiction over the subject matter of this Litigation and
6 over all Parties to the Litigation, including the Settlement Class.

7 4. The Court finds that, subject to the Final Approval Hearing, the Agreement is fair,
8 reasonable, adequate, and in the best interests of the Settlement Class as to their claims against
9 Defendant. The Court further finds that the Agreement substantially fulfills the purposes and
10 objectives of the class action, and provides beneficial relief to the Settlement Class. The Court also
11 finds that the Agreement (i) is the result of arms' length negotiations involving experienced counsel
12 made with the assistance of the Hon. Morton Denlow (Ret.); (ii) is sufficient to warrant notice of the
13 settlement and the Final Approval Hearing to the Settlement Class; (iii) meets all applicable
14 requirements of Federal Rule of Civil Procedure 23 for settlement purposes only, including that the
15 Settlement Class is sufficiently numerous, that there are questions of law and fact common to
16 members of the Settlement Class that predominate, that Mr. Lucero and his counsel adequately
17 represent the interests of the Settlement Class, and a settlement class action is a superior method of
18 adjudicating this Litigation; (iv) meets all other applicable requirements of law, including the Class
19 Action Fairness Act ("CAFA"), 28 U.S.C. § 1715; and (e) is not a finding or admission of liability
20 by Defendant.

21 5. For purposes of settlement only, the Court certifies the following class as defined in
22 the Agreement:

23 all individuals in the United States, from November 6, 2011 to the date the class
24 notice is disseminated, who received from or on behalf of Defendant: (1) one or more
25 calls on their cellphones, or (2) at least two telemarketing calls during any 12-month
26 period where their phone numbers appeared on a National or State Do Not Call
Registry or Solar City's Internal Do Not Call List more than 15 days before the calls.

27 6. For purposes of settlement only: (a) Bursor & Fisher, P.A and Nathan & Associates,
28 APC are appointed Class Counsel for the Settlement Class; and (b) Plaintiff Jose Albino Lucero Jr.

1 is named Class Representative. The Court finds that these counsel are competent and capable of
2 exercising the responsibilities of Class Counsel and that Plaintiff Jose Albino Lucero Jr. will
3 adequately protect the interests of the Settlement Class.

4 7. Should the Agreement not receive the Court's final approval, should the Court's final
5 approval order be reversed, remanded, or modified in any material way by any court, or should the
6 Agreement otherwise fail to become effective, the Court's grant of class certification shall be
7 vacated, and the Class Representative and the Settlement Class would once again bear the burden of
8 establishing the propriety of class certification. In such case, neither the certification of the
9 Settlement Class for settlement purposes, nor any other act relating to the negotiation or execution
10 of the Agreement shall be considered as a factor in connection with any class certification issue(s).

11 8. Pursuant to the Agreement, Epiq Class Action and Claims Solutions, Inc. is hereby
12 appointed as Settlement Administrator and shall be required to perform all the duties of the
13 Settlement Administrator as set forth in the Agreement and this order.

14 9. The Court approves, as to form, method, and content, the Notice, Summary Notice,
15 and Claim Form to be provided to the Settlement Class as set forth in the Agreement and Exhibits
16 A, B and D thereto, as well as the Addendum to the Agreement. The Court finds that such notice
17 complies with the requirements of Fed. R. Civ. P. 23 and due process, and constitutes the best
18 notice practicable under the circumstances. The Court further finds that the notice is reasonably
19 calculated to, under all circumstances, apprise Settlement Class Members of the pendency of this
20 Litigation, the certification of the Settlement Class for purposes of the Settlement, the terms of the
21 Agreement, and the right of members to object to the Settlement or to exclude themselves from the
22 Settlement Class. The Parties, by agreement, may revise the Notices and Claim Form in ways that
23 are not material, or in ways that are appropriate to update those documents for purposes of accuracy
24 or formatting.

25 10. Pursuant to Paragraph 7.3.1 of the Agreement, the notice shall be provided as
26 follows: The Settlement Administrator shall within thirty (30) days following the entry of this order
27 activate the Class Settlement Website, which will provide information about the Settlement, and
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1 post the settlement documents and case-related documents such as this order and the Settlement
2 Agreement, Notice, Summary Notice, and Claim Form.

3 11. Within thirty (30) days following the entry of this order, the Settlement
4 Administrator shall provide direct notice to Settlement Class Members as set forth in the Agreement
5 and the Addendum to the Agreement. The Settlement Administrator has also complied with the
6 requirements of 28 U.S.C. § 1715 by serving notice of the proposed Settlement upon the appropriate
7 government officials within ten (10) days after the Settlement Agreement was filed with the Court.

8 12. Settlement Class Members who wish to receive a payment under the Agreement
9 must complete and submit a valid Claim Form. All Claim Forms must be postmarked or received
10 by the Settlement Administrator no later than the Claims Deadline.

11 13. Settlement Class Members who wish to exclude themselves from the Settlement
12 Class may submit a request for exclusion by sending a written request to the Settlement
13 Administrator postmarked on or before the Opt-Out Deadline, which will be specified in the Notice.
14 A request for exclusion must be signed by the Settlement Class Member, and must include the
15 Settlement Class Member's name, address, and the telephone number that allegedly received a call
16 from or on behalf of Defendant during the Class Period, and must clearly state that the Person
17 wishes to be excluded from the Litigation and Agreement. A request for exclusion that does not
18 include all of this information, or that is sent to an address other than that designated in the Notice,
19 or that is not postmarked within the time specified, shall be invalid.

20 14. Any Settlement Class Member who submits a valid and timely request for exclusion
21 (i) shall not be bound by the terms of the Agreement or by the Final Approval Order and Judgment;
22 (ii) shall be deemed to have waived any rights or benefits under the Agreement; and (iii) may not
23 file an objection to the Settlement. However, any Settlement Class Member who fails to submit a
24 valid and timely request for exclusion shall be bound by all terms of the Agreement, the Court's
25 order granting class certification for settlement purposes, and the Final Approval Order and
26 Judgment, regardless of whether he or she has requested exclusion from the Settlement Class.

27 15. Any Class Member who has not timely filed a request for exclusion may object to
28 the fairness, reasonableness, or adequacy of the Agreement, to the Final Approval Order and

1 Judgment being entered as to Defendant in accordance with the terms of the Agreement, to the
2 attorneys' fees and expense reimbursement sought by Class Counsel, or to the awards sought by the
3 Class Representative or *Gibbs* plaintiffs as set forth in the Notice and Agreement. At least 14 days
4 prior to the Opt-Out Deadline, papers supporting the Fee Award shall be filed with the Court and
5 posted to the Settlement Website. Settlement Class Members may object on their own, or may do
6 so through separate counsel at their own expense.

7 16. To object, a Settlement Class Member must sign and file or mail to Class Action
8 Clerk, United States District Court, 450 Golden Gate Avenue, San Francisco, CA 94102, a written
9 objection no later than the Opt Out Deadline. By the same date (based on postmark), a Settlement
10 Class Member must also serve a copy on Class Counsel, Counsel for Defendant, and the Settlement
11 Administrator at the addresses set forth in the Notice. To be valid, the objection must include: (i)
12 the objector's name, address, and telephone number; (ii) the name, address, and telephone number
13 of any attorney for the objector with respect to the objection; (iii) the factual basis and legal
14 grounds for the objection, including any documents sufficient to establish the basis for his or her
15 standing as a Settlement Class Member, including the date(s) and phone number(s) at which he or
16 she received call(s) covered by this Settlement; and (iv) identification of the case name, case
17 number, and court for any prior class action lawsuit in which the objector and the objector's
18 attorney (if applicable) has objected to a proposed class action settlement. If, in addition to
19 submitting a written objection to the Settlement, the objector wishes to appear and be heard at the
20 Final Approval Hearing, the objector must file and serve upon Class Counsel, Counsel for
21 Defendant, and the Settlement Administrator by the Opt-Out Deadline a notice of intention to
22 appear with the Court and list the name, address, and telephone number of the person and attorney,
23 if any, who will appear.

24 17. All objections and any papers submitted in support of said objection, shall be
25 considered by the Court at the Final Approval Hearing only if, on or before the Opt-Out Deadline,
26 the Person making an objection submits copies of such papers to the Court by filing them in person
27 at any location of the United States District Court for the Northern District of California, or mailing
28 the objection to the Class Action Clerk, United States District Court, 450 Golden Gate Avenue, San

1 San Francisco, CA 94102. Settlement Class Members who fail to submit and serve timely written
2 objections in the manner specified above shall be deemed to have waived any objections and shall
3 be foreclosed from making any objection (whether by appeal or otherwise) to the Agreement at the
4 Final Approval Hearing, or from seeking review of this Agreement by appeal or other means and
5 shall be deemed to have waived his, her, or its objections and be forever barred from making any
6 such objections in the Litigation or any other litigation or proceeding. By filing an objection,
7 objectors and their counsel submit to the jurisdiction of the Court for all purposes, including but not
8 limited to subpoenas and discovery.

9 18. The Final Approval Hearing shall be held before this Court on January 18, 2018 at
10 1:30 p.m., San Francisco Courthouse, Courtroom 3, 17th floor, 450 Golden Gate Avenue, San
11 Francisco, CA 94102 to consider: (i) whether the proposed settlement of the Litigation on the terms
12 and conditions provided for in the Agreement is fair, reasonable and adequate and should be given
13 final approval by the Court; (ii) whether the Final Approval Order and Judgment should be entered;
14 (iii) whether to award payment of attorneys' fees and expenses to Class Counsel; and (iv) whether
15 to award payment of the requested incentive awards.

16 19. Papers in support of final approval of the Agreement shall be filed with the Court no
17 later than 14 days before the Final Approval Hearing.

18 20. In order to protect its jurisdiction to consider the fairness of this Agreement and to
19 enter a Final Approval Order and Judgment having binding effect on all Settlement Class Members,
20 the Court hereby enjoins all Settlement Class Members, and anyone who acts or purports to act on
21 their behalf, from pursuing all other proceedings in any state or federal court or any forum that
22 seeks to address any Released Party's or Settlement Class Member's rights or claims relating to, or
23 arising out of, any of the Released Claims.

24 21. Settlement Class Members shall be bound by all determinations and judgments in the
25 Litigation concerning the Litigation and/or Agreement, whether favorable or unfavorable.

26 22. In the event that the Agreement is terminated pursuant to the provisions of the
27 Agreement, then (i) the Agreement shall be null and void, and shall have no further force and effect
28 with respect to any Party in this Litigation, and shall not be used in this Litigation or in any other

1 proceeding for any purpose; (ii) all negotiations, proceedings, and statements made in connection
2 therewith shall be without prejudice to any person or Party hereto, shall not be deemed or construed
3 to be an admission by any Party of any act, matter, or proposition, and shall not be used in any
4 manner or for any purpose in any subsequent proceeding in this Litigation or in any other litigation
5 in any court or other proceeding; and (iii) other than as expressly preserved by the Agreement in the
6 event of its termination, the Agreement shall have no further force and effect with respect to any
7 Party and shall not be used in the Litigation or any other proceeding for any purpose.

8 23. The Court reserves the right to adjourn the date of the Final Approval Hearing
9 without further notice to the members of the Settlement Class, and retains jurisdiction to consider
10 all further applications arising out of or connected with the proposed Settlement. The Court may
11 approve the Settlement, with such modifications as may be agreed to by the Parties, if appropriate,
12 without further notice to the Settlement Class. The Parties may, without further approval from the
13 Court, agree to and adopt such amendments, modifications, and expansions of the Agreement and
14 its implementing documents (including all Exhibits to the Agreement) so long as they are consistent
15 in all material respects with this order and do not affect the rights of the Settlement Class.

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17 IT IS SO ORDERED.

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19 DATED: September 15, 2017



20 THE HONORABLE RICHARD SEEBORG
21 UNITED STATES DISTRICT JUDGE
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